

# **Alfred E. Ramey v. U.S. General Accounting Office**

**Docket No. 40-209-107-83**

**Date of Decision: March 2, 1988**

**Cite as: Ramey v. GAO (3/2/88)**

**Before: James, Presiding Member**

**Attorney Fees**

**Effect of PAB Regulations**

**Representation by PAB General Counsel**

**Presiding Member's Decision on Petitioner's Request for an Award of Attorney's Fees**

This matter is before me pursuant to a Petition for Review filed by Petitioner on July 28, 1986, in accordance with the provisions of 4 CFR §28.19(a). In the Petition for Review, Petitioner requests this Board (the Personnel Appeals Board) to award him attorney's fees and costs for having prevailed on a Petition for Review filed on his behalf by the General Counsel of this Board (the General Counsel) on April 17, 1984.

## **Factual Background**

Petitioner, Alfred E. Ramey, is no stranger to this Board. This is one of several actions Petitioner has pursued before this Board. This particular claim arises out of a finding by this Board, on July 10, 1987, overturning a finding by a Hearing Officer of this Board that Respondent's denial of a within-grade step increase and subsequent removal of Petitioner were in reprisal for Petitioner's exercise of his appeal rights.

Petitioner is a GS-13 Computer Specialist in the Accounting and Financial Management Division of Respondent. On May 18, 1983, Petitioner was notified by Respondent that his performance was not at an acceptable level of competence and, therefore, he would be denied a scheduled within-grade salary increase. On August 5, 1983, Respondent notified Petitioner that because of his unacceptable performance, he would be given a 90-day opportunity period to improve his performance. At the conclusion of the 90-day opportunity period, Petitioner was informed by Respondent that it proposed to remove Petitioner from employment with Respondent.

While neither the testimony nor exhibits introduced during the evidentiary hearing on Petitioner's request for an Award of Attorney's Fees provide a hint as to when, it is reasonable to conclude that Petitioner, at some point, contacted the General Counsel of this Board and the General Counsel instituted an investigation on behalf of Petitioner. In contacting the General Counsel, Petitioner alleged that the denial of his within-grade increase and his removal were in retaliation for having exercised his appeal rights. The General Counsel began his investigation into Petitioner's claim of retaliation on December 1, 1983. Pursuant to the provisions of the rules of this Board, the General Counsel notified Respondent that he was conducting an investigation into Petitioner's proposed removal to determine whether there were

reasonable grounds to believe that Respondent had committed a prohibited personnel practice in violation of 5 U.S.C. §2302. On January 24, 1984, the General Counsel sought and was granted a stay of the removal of Petitioner of twenty (20) days by this Board to complete his investigation. On March 22, 1984, the General Counsel filed a Request to Continue the Stay and on April 16, 1984, this Board ordered Petitioner's removal stayed until adjudication of Petitioner's case on the merits. Finally, on April 17, 1984, the General Counsel filed, on behalf of Petitioner, a Petition for Review seeking corrective action. In the Petition for Review, the General Counsel sought retroactive salary increase, effective May 1983, cancellation of Petitioner's removal, and an award of attorney's fees.<sup>1</sup>

In accordance with the provisions of 4 C.F.R., the Hearing Officer began the evidentiary hearing on the General Counsel's Request for Corrective Action on September 26, 1984.<sup>2</sup> On October 23, 1985, the Hearing Officer issued a Report of Findings of Fact and Recommendations, finding that Respondent had properly denied Petitioner a within-grade increase because Petitioner's performance was not at an acceptable level of competence and the denial of the within-grade increase and subsequent removal were not taken in reprisal because Petitioner had exercised his appeal rights.

On review, the full Board on July 10, 1986, reversed the findings and recommendations of the Hearing Officer. The full Board found that the denial of the within-grade increase and Respondent's removal of Petitioner were in reprisal for Petitioner's exercise of his appeal rights.

Throughout the pendency of the proceeding before the Hearing Officer and the review by the full Board, Petitioner was represented by both the General Counsel and private counsel. Petitioner determined that it was in his best interest to be represented by private counsel. However, the rules of this Board require the General Counsel to represent employees where the General Counsel has reason to believe that a prohibited personnel practice has occurred, or may occur, and where the General Counsel chooses to represent an employee, the role [if any] of private counsel is defined by the General Counsel. Hence, on July 28, 1986, Petitioner's private counsel, Walter Charlton, filed this Motion for an Award of Attorney's Fees and Costs, requesting \$279,440.51 in fees and \$1,374.56 in costs for representation of Petitioner from May 27, 1981, to the present. Included in Petitioner's Motion for an Award of Attorney's Fees was not only a request for fees and costs in connection with the denial of Petitioner's within-grade increase and removal, but fees and costs incurred in connection with a Petition for Review filed by Petitioner on May 15, 1981, alleging sex and age discrimination arising out of Petitioner's non-selection for promotion to a GS-14 position (hereinafter referred to as Ramey I); and fees and costs which arose from a complaint filed by Petitioner in the United States District Court for the District of Columbia asserting a claim of sex and age discrimination and defamation (hereinafter referred to as Ramey II). Petitioner also requested an incentive award of 50 percent.

Shortly after filing the Motion for an Award of Attorney's Fees, Petitioner filed a Motion for Supplemental Attorney's Fees, dated October 28, 1986. Included in the Supplemental Motion was a request for fees and costs in connection with preparation of the attorney's fees request (hereinafter referred to as Ramey IV), and fees and costs incurred in connection with a motion filed in the Court of Appeals for the District of Columbia, and work performed in connection with a Petition for Enforcement of the Board's Final Decision of July 10, 1986. According to the Supplemental Motion, the work claimed in the Supplemental Motion was performed by Petitioner's private counsel during the period of July 11, 1986, to October 20, 1986, and the hourly rate requested was at \$150 per hour. Petitioner did not request an incentive award for the work set forth in the Supplemental Motion. The total requested in the Supplemental Motion was an additional \$10,927.22. Attached to the Supplemental Motion was a

resubmission of the original request in which Petitioner's private counsel indicated that counsel had incorrectly computed the amount requested in the original Motion for an Award of Attorney's Fees and Costs submitted on July 28, 1986. Petitioner revised his original request of \$279,440.51 downward to a request for \$247,492.73 in fees and \$1,374.56 in costs.

On October 22, 1986, Respondent filed a Motion for Partial Dismissal of Petitioner's Request for Attorney's Fees and Costs alleging, as ground for dismissal, lack of jurisdiction. Respondent's Motion for Partial Dismissal requested that the fees and costs requested for the matters referred to as Ramey I and II, as well as the fees and costs requested for the representation of Petitioner in United States District Court, be dismissed. On October 27, 1987, Petitioner's counsel filed an opposition to Respondent's motion and on November 6, 1986, I heard oral arguments, after providing both parties an opportunity to submit written response, on Respondent's Motion for Partial Dismissal and Motions to Compel Answers to Interrogatories filed by both parties.<sup>3</sup>

At the conclusion of oral arguments, Petitioner was granted an opportunity to further brief the issues raised and argued in Respondent's Motion for Partial Dismissal. Petitioner's Motion to Compel was denied and Respondent's Motion to Compel was granted, in part.

On November 7, 1986, Petitioner retained the law firm of Fitzpatrick and Associates to represent him in the Motion for an Award of Attorney's Fees. Shortly thereafter, Petitioner filed a Supplemental Opposition Response to Respondent's Motion for Partial Dismissal and Respondent subsequently filed a response to Petitioner's Response in Opposition. Upon consideration of all the issues raised, I granted Respondent's Motion for Partial Dismissal, thereby dismissing all claims which did not relate to Respondent's denial of Petitioner's within-grade increase, Petitioner's removal, and the Board's ruling thereon of July 10, 1986.

The hearing on the Request for an Award of Attorney's Fees began on December 16, 1986, and during the proceeding, Petitioner submitted at least two corrected versions of a memorandum purporting to indicate the time spent by counsel in representing Petitioner. Even at this late date, Petitioner appears uncertain about the exact number of hours claimed. Petitioner has since revised his requests to \$187,378.50 in fees and \$967.71 in costs. Additionally, the firm of Fitzpatrick & Associates has requested \$20,986.00 in fees and \$1,827.53 in costs for its representation of Petitioner.

Thus, this case presents three issues which I must decide. The first issue presented is whether Petitioner should be compensated for fees and costs incurred by private counsel during the time Petitioner was represented by the General Counsel of the Board; second, if Petitioner should be awarded attorney's fees while represented by the General Counsel, then what is the reasonable hourly rate for the services of Petitioner's private counsel; and third, what are the hours that were reasonably expended by Petitioner's counsel on behalf of Petitioner.

### **Analysis**

The primary issue before me is what amount of reasonable attorney's fees should be awarded to the Petitioner. In making that determination, I begin by noting that monetary liability may not be imposed against a Federal Agency unless Congress has clearly waived sovereign immunity. Frazier v. Merit Systems Protection Board, 672 F.2d 150, 168 (D.C. Cir. 1982); Williams v. Office of Personnel Management, 718 F.2d 1553, 1556 (Fed. Cir. 1983). However, in this case I need not address that issue because this Board has determined that it has authority to award attorney's fees. In Ramey v. General

Accounting Office, Decision No. M6-B5 (March 9, 1982), this Board held that under the provisions of 4 C.F.R. §28.22(m), it had authority to award attorney's fees to prevailing parties. While the Board found that it had authority to make an award of attorney's fees, it also held that the award, when made, must be consistent with the standards set forth at 5 U.S.C. §7701(g). Id. This Board has further held in a subsequent decision, a progeny of Ramey, Decision No. M6-B6 (May 12, 1982), that Paragraph (2) of Subsection (g) sets forth the standard of review for an award of attorney's fees in cases involving a finding of discrimination. Absent a finding of discrimination, Paragraph (1) of Subsection (g) governs the award. Id. Under §7701(g)(1), three conditions must be met before an award of attorney's fees can be made: 1) the Petitioner must be the prevailing party; 2) the award of attorney's fees must be warranted in the interest of justice; and 3) the fees awarded must be reasonable. Allen v. Postal Service, 80 FMSR 7015 (July 22, 1980). Because there was a finding of reprisal for exercise of appeal rights by the Board in the case before me, the standards of §7701(g)(1) are not applicable. The review standards of §7701(g)(2) are applicable. Petitioner initially filed his Petition with the Board under the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5. As a result, any decision rendered in this case must be consistent with traditional cases involving allegations of discrimination. See New York Gaslight Club, Inc. v. Carey, 447 U.S. 54 (1980); Copeland v. Marshall, 641 F.2d 880 (D.C. Cir. 1980); Parker v. Califano, 446 F. Supp. 530 (D.D.C., 1978). In such cases, the amount of attorney's fees which should be awarded is determined in accordance with standards mirroring those of §706(k) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(k). (See also 29 C.F.R. §1613.217, 1613.221(d) and 1613.271(c)). Subparagraph (g)(2) of 5 U.S.C. §7707 states that:

If an employee or applicant for employment is the prevailing party and the decision is based on a finding of discrimination prohibited under Section 2302(b)(1), the payment of attorney's fees shall be in accordance with the standards prescribed under Section 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

Hence, Subparagraph (g)(2) of U.S.C. §7701 is the applicable regulation and the standards of review are those prescribed by §706(k) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-5(k).

To receive an award of attorney's fees under §706(k) of Title VII, 42 U.S.C. 2000e-5(k), a party need only be the prevailing party and the fee award must be reasonable. Laffey v. Northwest Airlines, 32 FEP 770, 776 (D.D.C. Cir. 1983). Where Petitioner receives a substantial benefit he is said to be a prevailing party, and would meet the first requirement of §706(k). Even had the parties entered into a settlement which provided some benefits to the Petitioner or some vindication of his rights, the congressional intent to encourage private enforcement of civil rights laws would be furthered by awarding fees to Petitioner. This is true even when both sides lose something and give something, resulting in a draw. Fees will be awarded "as long as the Petitioner has received a substantial benefit." Chicano Police Officers Ass. v. Stover, 624 F.2d 127 at 131 (10th Cir. 1980). Also, fees may be awarded where a prevailing party's rights are advanced in an ancillary or collateral proceeding to the main action. Chrapliwy v. Uniroyal, Inc., 670 F.2d 760 (7th Cir. 1982); McBride v. Department of Agriculture, 4 M.S.P.B. 17, 18 (1980). On the other hand, no compensation should be paid for time spent litigating claims upon which the party seeking the fee did not ultimately prevail. Laffey v. Northwest Airlines, *supra*; Copeland v. Marshall at 891-892.

There is little doubt that Petitioner, in this case, did receive some benefit. Petitioner was ordered reinstated with back pay. However, Petitioner's initial request for an award of fees included a claim for fees and costs related to a Petition for Review filed by Petitioner in 1981 in which Petitioner alleged that he had been discriminated against on the basis of sex and age in connection with his non-selection for promotion

to a GS-14 position. Petitioner argues that although he prevailed on his claim and was awarded attorney's fees, this Board failed to fully compensate him and that the claim of 1981 and the present retaliation claim are related. Petitioner, however, failed to establish a continuing pattern of reprisal, a plausible connection between the two Petitions for Review, and is, therefore, mistaken about his rights to fees for the 1981 Petition. While I must take care not to reduce a fee award arbitrarily simply because Petitioner did not prevail under one or more of the legal theories he presented, I have no basis to revisit a final fee award rendered by this Board. Laffey, supra. If Petitioner disagreed with the decision of this Board in 1981, he should have appealed that decision. Petitioner's failure to appeal the decision of this Board in 1981, in a timely manner, made the decision a final decision of this Board not subject to review by me. Even more important, the matters presently before me upon which Petitioner has prevailed do not involve a claim of discrimination based upon age and sex, as was Petitioner's claim in 1981. In the case before me, Petitioner prevailed on a claim of retaliation for exercise of appeal rights. Also, Petitioner's 1981 Petition for Review and the Petition for Review filed in 1984 by the General Counsel on behalf of Petitioner were not collateral actions brought by Petitioner. Petitioner is, therefore, not a prevailing party within the meaning of §706(k) of Title VII, 42 U.S.C. 2000e-5(k) with regard to issues arising out of the Petition for Review filed in 1981 for purposes of this decision.

Likewise, Petitioner is not a prevailing party within the meaning of §706(k) of Title VII, 42 U.S.C. 2000e-5(k) for fees claimed in the proceeding he filed in the United States District Court for the District of Columbia. In his District Court claim, Petitioner alleged that he had been discriminated against on the basis of sex and age and defamation of character. The Board, in its decision of July 10, 1986, made no findings on those issues and it is not a collateral action. Petitioner, therefore, did not prevail and any fees which Petitioner may be entitled to for that proceeding must be awarded by the District Court.

With regard to the proceeding in which Petitioner engaged in the United States Court of Appeals, while this proceeding may have been a collateral proceeding, the Court of Appeals, in a decision dated September 10, 1987, denied Petitioner's request for an award. In light of the Court of Appeals decision, I cannot and will not disregard that finding. See Laffey v. Northwest Airlines, supra at 794. Even had the Court of Appeals not rendered such a ruling, Petitioner would still not meet the requirements of §706(k). Within the requisite time period for an appeal, Respondent, on August 8, 1986, filed a Petition for Review in the United States Court of Appeals for the District of Columbia Circuit, seeking to have overturned the final decision of this Board entered in this case on July 10, 1986. On December 11, 1986, Respondent filed a Motion for Voluntary Dismissal. Respondent's Motion for Voluntary Dismissal was filed prior to Petitioner submitting any pleadings to the Court. On December 24, 1986, Petitioner filed a Motion in Opposition to Respondent's Motion for Voluntary Dismissal. The Court of Appeals granted Respondent's Motion for an Order of Voluntary Dismissal on June 29, 1987, and Petitioner's Request for Attorney's Fees and Costs was denied. Therefore, Petitioner is not a prevailing party within the meaning of §706(k).

Finally, Petitioner's request for fees related to the Petition for Enforcement of Final Decision is also denied because Petitioner is not a prevailing party within the meaning of §706(k). On September 30, 1986, the General Counsel and Petitioner filed a Petition for Enforcement of Final Decision in which they alleged that Respondent had not complied with the terms of the Board's Order of July 10, 1986, in that Respondent had failed to place Petitioner back in his prior position within the Accounting and Financial Management Division of Respondent. On October 8, 1986, Respondent was ordered to explain why it had not complied with the Board's Order. Upon receipt and review of Respondent's response, the Board, on December 4, 1986, denied Petitioner's Petition for Enforcement. Although the Petition for Enforcement of Final Decision does constitute a collateral proceeding, Petitioner did not prevail and, therefore, cannot be

compensated for those services.

Consequently, the only services for which Petitioner may be awarded fees and costs by me are those services and costs which arose out of Respondent's denial of Petitioner's within-grade and subsequent removal in 1984 which was reversed by this Board on July 10, 1986, or the General Counsel's Petition for Corrective Action.

This brings me squarely to the threshold issue of whether Petitioner has an entitlement to fees and costs when he has been fully represented throughout these proceedings by the General Counsel. Throughout these proceedings Petitioner has been represented by both private counsel and the General Counsel. According to the General Counsel, Petitioner's private counsel was an invaluable resource throughout the litigation and they spent much time together discussing technical aspects of the case with the twin purpose of (1) assisting the General Counsel in understanding the technical jargon and issues and (2) in deciphering what the principal agency witnesses were saying in their various pre-trial statements. Further, because of private counsel's involvement in the case, the General Counsel states that he did not spend hours of preparation which would have been necessary. Hence, Petitioner's counsel's role in the proceedings was defined and limited by the needs of the General Counsel.

Respondent argues that the General Counsel, unlike the Special Counsel of the Merit Systems Protection Board, is an employee advocate and as such represents the employee once the General Counsel decides to accept the employee's case. Respondent's argument has merit. Under the provisions 4 C.F.R. §28.17(d) where an employee of GAO files a claim with the General Counsel and the General Counsel, after investigation, determines that there is reasonable evidence to believe the employee's rights have been violated, the General Counsel is required to offer to represent the employee. If the employee accepts the offer of representation of the General Counsel, the General Counsel, according to the provisions of §28.17(c), is required to direct the presentation of the employee's case. However, the same regulations recognize a role for private counsel even where the employee elects to have the General Counsel represent him. Section 28.17(e) states that the role of private counsel is to be limited to assisting the General Counsel as the General Counsel determines to be appropriate. Thus, it is only reasonable to conclude that if private counsel does provide assistance to the General Counsel, regardless of the role private counsel plays, he ought to be compensated for his services, should the General Counsel and he prevail. Such a holding by me is consistent with the congressional intent behind the awarding of fees and costs to prevailing parties and the Board regulations.

### **Reasonable Fee**

Having determined that Petitioner is the prevailing party, and is entitled to fees and costs, I must next determine what is a fair or reasonable fee which should be awarded to Petitioner. The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Hensley v. Eckerhart, 461 U.S. 424 (1983). Courts have held that the calculation of the reasonable hours times the reasonable rate, provides an objective basis on which to make an initial estimate of the value of Petitioner's private counsel's services. Laffey v. Northwest Airlines, Inc., 746 F.4.13 (D.C.Cir. 1984). The product of the reasonable hourly rate times the hours reasonably expended is known as the lodestar figure. Id.

Petitioner has the burden of proving the basic time and rate elements of a reasonable fee. The Petitioner must prove the prevailing rates and time actually expended on claimed compensable activities. Blum v. Stenson, 465 U.S. 886. Proof of these two elements demonstrate prima facie reasonable fees based upon the time and rate factors. Id. The burden then shifts to Respondent to present specific evidence in challenges to the reasonableness of the requested rates or to the reasonableness of time for a particular task or for the litigation as a whole. Id. Respondent, in presenting a challenge to Petitioner's prima facie proof, cannot rely on conclusionary denials. Id. However, throughout the presentation of proof and challenges by both parties, I retain independent discretion to determine what is the reasonable rate and reasonable time expenditures. In exercising my discretion, to determine the reasonable rate and fee, I must not do so in an arbitrary manner. This entire process must be objective. Laffey v. Northwest Airlines, Inc., supra.

### **Reasonable Hours Expended**

To determine the reasonable hours expended I must take the total hours claimed by Petitioner and assess whether any downward adjustments are necessary. City of Riverside v. Rivera, 106 S.Ct. (1986); Hensley v. Eckenhart, Id.; Laffey v. Northwest Airlines, Inc., Id.; Copeland v. Marshall, 641 F.2d 880, 890-91 (D.C.Cir. 1980); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714(5th Cir. 1974). Downward adjustments or deductions from Petitioner's total hours will be made for hours which appear to be excessive, redundant, or otherwise unnecessary. Eliminated also from the calculation are hours spent on unsuccessful claims. Laffey v. Northwest Airlines, Inc., Id. Initially, the burden is upon the parties to make the downward adjustments, if any are necessary. Should the parties fail to make appropriate billing adjustments, it becomes the responsibility of the Presiding Member to make such billing judgments. Although the parties were provided several opportunities, they failed to exercise appropriate billing judgments in this case. I have, therefore, reviewed the hours claimed by Petitioner and made appropriate determinations as to reasonableness.

Petitioner has requested compensation for a total of 867.5 hours. Of that total, I find that 416.63 hours are the reasonable hours for which Petitioner should be compensated. The 867.5 hours claimed by Petitioner have been adjusted according to matters upon which Petitioner did not prevail, excessive amounts of time expended, duplication and hours which Petitioner failed to substantiate. Many of the hours which I find excessive relate to the large number of unreasonably long conferences which Petitioner and his counsel held and the excessive number of hours devoted to review of the same file. For example, Petitioner claims 9 hours for conferences on July 7, 1984, 5 hours on July 12, 1984, 8 hours on October 15, 1984, 4.5 hours on October 22, 1984, etc. Also, there appears to have been an excessive number of hours devoted to review of the file. As argued by Respondent, Petitioner cannot be rewarded for wasted, inefficient, and excessive use of time. In Re Fine Paper Antitrust Litigation, 751 F. 2d 562 (3rd Cir. 1984). Deductions were also made for ministerial and clerical work, Cruz v. Hauck, 762 F. 2d 1230, 1235 (5th. Cir. 1985). Likewise, non-legal work may be compensated for at a lesser rate. The dollar value of non-legal work is not enhanced just because Petitioner's private counsel spent 2 hours typing Petitioner's work assignment, or 5.5 hours, assisting Petitioner in securing bank financing. Those hours were accordingly reduced.

With regard to Respondent's argument concerning Petitioner's claim for travel time, I find that, in this case, Petitioner should be compensated at the full hourly rate. In addition to the case law cited by Respondent for the proposition that travel time should be compensated at a reduced hourly rate, there are the most recent decisions of Henry v. Webermeier, 738 F. 2d 188, 1911 (7th Cir. 1984) and Planned Parenthood Association v. Ashcroft, 655 F. 2d 848, 872 (8th Cir. 1981) which did not reduce the hourly rate, and Johnson v. University College, 706 F. 2d 1205, 1208 (11th Cir. 1983) which did reduce the

hourly rate. Hence, it appears that the courts are split on this particular issue. More importantly, in this case, Petitioner does not claim a significant number of travel hours. Petitioner only claims about 32 hours in travel time. Not a significant number of hours compared to Petitioner's overall claim.

Respondent further argues that Petitioner's claim should be reduced because Petitioner's claim is exorbitant which required Respondent to devote an unnecessary amount of time to refute Petitioner's claim. While I do find merit in Respondent's argument, I do not find that Petitioner's claim is so significantly out of line that it requires the imposition of sanctions. Had Petitioner properly adjusted its request, it certainly would have required less hearing time and work on the part of Respondent. But the record before me does not lead to a clear indication as to whether Petitioner's actions were based on an intent to defraud Respondent (i.e. United States Government) or a lack of understanding of his burden of proof in a request for an award of fees and costs. Although there are circumstances in which such sanctions should be imposed, and the facts of this case do compare very closely to these circumstances. I do not see the need to do so in this case. I am, however, troubled by Petitioner's counsel's apparent reconstruction of his time records and the large number of obvious errors, as well as counsel's inability to provide rational explanations for those errors. My specific findings regarding Petitioner's hours are set forth below.

<b>Date</b>	<b>Description of Services Claimed Allowed</b>	<b>Time Claimed</b>	<b>Findings</b>	<b>Time Allowed</b>
9/22/81	TCs from client. Having continuing problems w/Kearns re his performance on the EEOC Job and HUD analyses. Cf with RTS re how to proceed.	2.00	Petitioner was not denied within-grade increase until May 18, 1983. Appears unrelated to claim in 1983. Petitioner failed to establish a relationship	Denied
10/12/81	Cfs w/AER re situation at work and status of case.	1.00	Unrelated	Denied



11/13 & 11/16/81	Three TCs w/AER re microfiche memo Discuss the agency's tactics for retaliating against client and our strategy to fight the reprisals.	1.50	Unrelated	Denied
11/18/82	TC from client re letter from V. Robinson requiring response. Aid in drafting VR response letter.	2.00	Unrelated	Denied
2/20/82	Cf w/AER re status of continuing	1.00	Unrelated	Denied
5/12/83	Cf w/AER re letter from Moortgat to Robinson granting AER within- grade increase. Investigation of why letter was not delivered.	.50	Reasonable	50
5/23/83	Cf w/AER re possible need for PI/TRO where to file?	.50	Reasonable	.50
5/31/83	Cf w/Carl D. Moore (CDM) re treatment of AER. Advise AER of contact.	1.00	Reasonable	1.00

6/1/83	Cf w/Silva, Civil Rights Officer, re treatment of AER	1.00	Reasonable	1.00
6/1/83	Cf w/AER re contact w/Silva & other matters.	3.00	Excessive in view of prior contacts.	1.00
6/26 - 6/29/83	Cfs w/AER re denial of within-grade increase, new job assignments and traps being set by boss. Advise re how to phrase reply memo concerning boss's criticisms. Discuss general strategy.	8.50	Excessive	2.00
7/6/83	Review file. Cf w/AER re work to do on reply memo re job performance.	3.00	Review of file should not take 3 hours.	1.00
7/9/83	Cf w/AER re work on reply memo. Edit and amend same.	3.00		Denied

7/12 - 7/13/83	Review OCHAMPUS plan, a work product produced by AER. Advise AER re how to make presentation of plan.	12.00	I agree with Respondent. Petitioner was hired to perform specific duties. Petitioner's counsel should not be compensated for performing these duties.	Denied
7/14/83	Typing, drafting, editing and revising OCHAMPUS plan.	2.00	Non-legal advice. Preparation of Petitioner's work product.(See above).	Denied
7/18/83	TCs re matter.	1.50	No listing of who telephone conference was with or matter discussed.	Denied
7/18/83	Cfs w/AER and Wysong re potential need for PI/TRO.	1.50	Does not appear related.	Denied

7/25/83	Cfs w/AER re denial of within-grade increase. Cf w/EWT. Draft motion for reconsideration of decision re AER's employment status.	4.50	Excessive. Based upon testimony of counsel. There is merit to Resp's. argument that Petitioner and his counsel appear to have had an unusual number of excessively long conferences.	2.50
7/27/83	Re-draft 15-day letter seeking review of denial of within-grade increase. Cf w/AER re re-drafting.	4.50	Excessive. Letter was only one page.	2.00
7/31/83	Cf w/RTS re plan to fight adverse treatment. Review files.	2.50	Excessive	1.00
8/2/83	Cf w/AER re what information DeRyder can give at PAB. TC DeRyder. Travel to SB&S and DeRyder including travel time (1 Hour). Interview.	2.50	Reasonable	2.50

8/2/83	Revise 15-day letter's facts and allegation to conform w/DeRyder's testimony.	1.00	Reasonable	1.00
8/8/83	Draft De Ryder's affidavit.	3.00	Reasonable	3.00
8/9/83	Cfs w/AER & Gatewood re her testimony.	2.50	Excessive	1.50
8/10/83	Edit DeRyder affidavit.	1.50	Not related	Denied
8/11/83	Edit, Xerox & mail opposition to motion for protective order. Cf w/AER re same.	1.50	Not related	Denied

8/22/83	Cf w/AER & Don Lentz (EEO Investigator). Schedule appointment to investigate AER's allegations.	1.00	Reasonable	1.00	8/29/83	To bank w/AER re financing considerations. Follow-up Cf w/AER re how much money is owed. Review file including travel time (1 hour).	5.50	While assisting Petitioner in obtaining financing may have had some relationship to this case, I do not find it sufficiently related that Petitioner's counsel should be compensated at the same rate as legal advice. I also find that 5.50 hours is extremely excessive.	2.00
9/1/83	Prepare for and Cfs w/AER.	2.50	Excessive	1.50					
9/1/83	Prepare for and Cfs w/Lentz (1:30 - 4:30).	3.00	Excessive	.50					
9/2/83	Cf w/AER re motions, scheduling. Prep for next mtg w/Lentz.	2.00	Excessive	.50					
9/8/83	Interview Gatewood including travel time (1 hour).	2.00	Reasonable	2.00					

9/8/83	Review file. Legal research. Cross-check facts as told by client w/those reported by Gatewood.	6.50	Excessive. No indication as to how much is research and file review nor what was researched.	3.00
9/10/83	Review file to prepare for Lentz interview.	1.00	Excessive in view of other preparations and reviews of file.	.50
9/10/83	Prepare for & interview Lentz.	5.00	Excessive in view of other preparation.	2.00
9/12/83	Cfs w/AER & RTS re strategy for handling factual inconsistencies. Review file & new papers.	6.50	Excessive	3.00
9/15/83	Attend seminar specific to AER's case.	4.00	Withdrawn	0
9/16/83	Attend seminar specific to AER's case.	4.00	Withdrawn	0
9/19/83	Prepare for interview of Lentz.	1.00	Excessive.	0
9/19/83	Interview Lentz including travel time (1 hour).	3.50	Excessive. A total of 7 hours have already been claimed, 6 hours on the 10th., and 1 on the 19th.	0

10/31/83	To GAO. Cfs w/AER and Lentz re strategy for handling inconsistent facts evidenced by Lentz' record.	4.00	Excessive	3.00
11/1/83	Reviewing Lentz memos.	1.50	One hour and half to review this non-complete memo is excessive.	.50
11/3/83	TC w/Lentz.	.50	Excessive.	.25
11/9/83	Cf w/AER re new matters; GAO's proposed termination.	.50	Reasonable	.50
12/6/83	Drafting response to GAO's Notice of Intent to Terminate letter.	6.50	Withdrawn Denied Excessive	0
12/7/83	Response to Notice of Intent to Terminate letter. (9:00 - 2:30)	6.50	Letter. 6.50 hours is excessive for a 3-page letter.	3.50
12/8/83	Drafting letter to Bowsher.	2.50	Reasonable	2.50
12/10/83	Cf w/AER & reviewing file re plan to appeal decision to terminate AER to PAB.	2.00	Reasonable	2.00



12/12/83	TCs w/AER & CDM re strategy for preventing AER's termination. Proposed 12/17/83 termination date extended to 1/9/84. CDM requesting stay of decision pending appeal to the PAB.	1.50	Reasonable	1.50
12/12/83	Three TCS to both AER & CDM re strategy to avoid termination. Legal research.	8.00	Excessive. No indication as to amount of research and telephone conference.	4.50
12/16/83	Reviewing Silva's proposed termination letter. TC to Silva re same. Drafting appeal of AER's	4.00	Reduced. Failed to produce letter at hearing. No way to determine whether 4 hours reasonable.	2.00
12/27/83	TCs from AER & CDM re efforts to have proposed termination stayed.	.25	Reasonable	.25
12/28/83	TC w/CDM re stay.	1.50	Excessive	.50
12/29/83	Cf w/AER re stay.	1.00	Reasonable	1.00

12/30/83	Cf w/AER re strategy & timing.	2.25	Excessive in view of previous meeting.	1.00
1/3/84	Cf w/AER. Reviewing file.	1.50	Excessive	1.00
1/4/84	Cf w/CDM. Review file & schedule depositions.	1.50	Excessive. File was reviewed previously.	.50
1/9/84	Organizing evidence for CDM. Cf w/AER re additional evidence for CDM.	2.00	Reasonable	2.00
1/11/84	TCs w/CDM. Drafting two letters. Reviewing file & setting schedule.	1.25	Excessive	.55
1/13/84	Cf w/AER, trip to GAO, Cf w/Moore & return (10:00-10:15, 11:30-2:30). including travel time (1 hour).	3.25	Reasonable	3.25
1/23/84	Cfs w/AER & CDM re upcoming hearing, potential evidence, and prep for hearing. Review file.	3.50	Reasonable	3.50

1/24/84	Cfs w/AER & CDM re upcoming hearing, potential evidence, and prep for hearing. Prepare follow-up memo.	2.50	Reasonable	2.50
1/24/84	TCs w/CDM & AER taking a polygraph	1.50	Reasonable	1.50
1/24/84	Cf w/AER re what are specs of position of OCHAMPUS Controls Analyst.	1.00	Reasonable	1.00
1/25/84	Reviewing OCHAMPUS plan w/AER	3.50	Reasonable	3.50
1/25/84	Prep for meeting w/CDM & Jason.	4.00	Reasonable	4.00
1/27/84	Prep for & trip to Jason's office in D.C. Cf w/CDM & Jason. up Cf w/AER re how to address Jason's potential expert testimony (10-4:30) including travel time (1 hour).	6.50	Excessive Follow-in light of 4 hours prep on 1/25/84.	2.00

1/29/84	Cf w/AER re controls on OCHAMPUS position and non-application	1.50	Reasonable	1.50
1/30/84	Cf w/AER at WTC office in view of the meeting the day before.	2.50	Excessive	1.00
1/31/84	Cf w/AER & CDM. Reviewing Lentz letter and Socolar report.	2.75	Reasonable	2.75
2/1/84	Prepare and edit AER's response to questions re General Review Analysis (GRA) of OCHAMPUS.	8.50	whether time reasonably spent.	
2/2/84	Cf w/AER re strategy, tactics & Gatewood.	2.50	Excessive	1.50
2/3/84	Cf w/AER. Review file & prep for upcoming hearing.	1.50	Denied. Excessive prep each day.	1.50
2/7/84	TCs w/AER & CDM re prep for upcoming hearing.	.50	Reasonable	.50
2/8/84	TCs w/AER & CDM concerning GRA of OCHAMPUS position.	2.50	Reasonable	2.50

2/9/84	Reviewing file. Legal Research re evidence. Preparing strategy.	3.50	Excessive review of file and no indication of subject of research.	1.50
2/14/84	TCs w/AER & CDM re prep for upcoming PAB hearing.	1.00	Reasonable	1.00
2/15/84	Cfs w/AER & CDM re how to proceed in the PAB forum.	2.25	Reasonable	2.25
2/17/84	Cfs w/AER & CDM re tactics before the PAB.	4.50	Excessive	2.50
2/21/84	Cfs w/AER. Reviewing CDM's papers. TC Mosher and CF w/office.	5.50	Excessive	2.50
2/22/84	Cf w/AER & TC from PAB re status of stay of AER's termination. Also, attempting to negotiate settlement.	.50	Reasonable	.50
3/4/84	Settlement negotiations with Office of General Counsel. Cf w/CDM.	2.50	Reasonable	2.50
3/5/84	Settlement negotiations with Office of General Counsel.	.50	Reasonable	.50

3/6/84	Settlement Cf w/AER, Mosher, CDM & Schneider. Follow-up Cf w/AER including travel time (1 hour).	4.00	Reasonable	4.00
3/7/84	Cfs with AER re ongoing retaliation matters and whether and how to deal with questions.	.75	Reasonable	.75
3/12/84	Cfs w/AER and CDM re status of settlement negotiations.	.75	Reasonable	.75
3/13/84	TCs w/AER & CDM re Agency's offer to let AER keep job and be transferred to another area if he releases claims.	.50	Reasonable	.50
5/10/84	Prepare for PAB pre-hearing Cf	1.50	Reasonable	1.50
5/11/84	Reviewing file and Cf w/AER trying to anticipate opposing tactics in preparation for pre-hearing Cf. Pre-hearing Cf. Follow-up Cf w/CDM.	3.00	Excessive review of file and conference with Petitioner.	1.00

5/14/84	Cf w/AER re certification of libel/slander decision for appeal.	.50	Denied. Did not prevail.	0
5/14/84	Cf w/CDM re discovery in PAB matter.	.50	Reasonable	.50
5/15/84	Cfs w/CDM and GMG (computer exp.).	2.00	Reasonable	2.00
5/15/84	Cf w/AER re who to use as a computer expert.	1.00	Excessive already spent two hours.	0
5/22/84	Cfs w/AER & CDM re witness list and trial tactics. CF w/computer expert.	1.00	Reasonable	1.00
6/1/84	Depositions.	8.00	Denied. Did not appear at Rensit & Hack deposition. It is not known what depositions were taken and at which deposition counsel appeared.	0
6/4/84	Depositions.	8.00	(See above)	0
6/5/84	Depositions.	5.00	(See above)	0
6/6/84	TCs w/AER & CDM re GRA situation.	1.50	Reasonable	1.50

6/7/84	Cf w/AER & CDM and reviewing files re GRA & Jason (computer expert) (6 a.m. - 3 p.m.)	9.00	Excessive amount of time spent reviewing file and conference w/Petitioner.	3.00
6/12/84	Cf's w/AER & CDM in preparation for pre-hearing Cf including travel time (1 hour).	5.00	Reasonable	5.00
6/14/84	Prehearing Cf including travel time (1 hour).	2.25	Reasonable	2.25
6/15/84	Deposition of AER handled by WTC including travel time (1 hour).	6.00	Reasonable	6.00
6/18/84	Deposition of AER and follow-up CF re same points which came up and how to handle them at hearing including travel time (1 hour).	6.00	Reasonable	6.00
7/9/84	Reviewing transcripts of AER depositions. Drafting opposition to motion to compel and for a protective order.	12.00	Denied, did not prevail.	0



7/10/84	Edit, revise, and review opposition to motion to compel and for a protective order. Cfs w/AER & CDM re same.	4.00	Denied, did not prevail.	0
7/16/84	To GAO to depose AER including travel time (1 hour). Gov't cancels. Follow-up Cfs w/AER & CDM re previous deposition and prep for completion of AER depo.	3.50	Reasonable	3.50
7/24/84	Settlement negotiations w/Office of General Counsel. Follow-up Cf w/CDM.	2.00	Reasonable	2.00
7/25/84	Cf w/client re case he wants reviewed. Cf w/CDM re settlement negotiations. To GAO to acquire case from AER including travel time (1 hour).	1.00	Reasonable	1.00

8/8/84	Legal Research re whether expert can give expert opinion absent full knowledge of facts. TC CDM -not in. Follow-up Cf w/AER re same.	1.50	Reasonable	1.50
8/20 & 8/21/84	TCs to AER, CDM, and Dave Turk OCHAMPUS job and test project.	1.50	Reasonable	1.50
9/5/84	TCs to AER, Wysong, and Willis (PAB atty) re OCHAMPUS Project.	1.50	Reasonable	1.50
9/6/84	Cfs w/Gatewood, Wysong, Willis re agency's forcing Wysong to retire because he allegedly falsified docs.	1.25	Reasonable	1.25
9/7/84	TCs to Willis and Wysong.	.75	Reasonable	.75
9/18/84	Cfs w/Branch, Turk, AER, & CDM re hearing prep.	6.50	Reasonable	6.50
9/19/84	Cfs w/AER & CDM re hearing prep.	3.50	Reasonable	3.50

9/20/84	Cfs w/AER & CDM re hearing prep.	1.00	Reasonable	1.00
9/21/84	To GAO including travel time (1 hour). Mtgs w/Wysong & CDM re former's expert testimony and impeachability. Review Wysong's file.	3.25	Reasonable	3.25
9/21/84	Cf w/Daily	.25	Reasonable	.25
9/22/84	Cf w/AER re hearing prep.	.75	Reasonable	.75
9/24/84	Hearing prep.	7.00	Denied. Excessive in view of previous prep. of 12 hrs.	0
9/24/84	Reviewing Kearns' deposition.	1.50	Reasonable	1.50
9/25/84	TC w/AER re tomorrow's hearing	.25	Reasonable	.25
9/26/84	Hearing. Working lunch including travel time.	7.50	Reasonable	7.50
10/3/84	Hearing. Working lunch including travel time (1 hour).	7.50	Reasonable	7.50
10/4/84	Follow-up discussions w/AER & CDM	2.50	Reasonable	2.50

10/15/84	TCs w/AER & CDM re hearing schedule and cross-exam prep.	8.00	Denied. Failure to indicate who cross-exam. Did not cross-exam anyone until 11/15/84	0
10/22/84	TC w/AER & CDM re prep for cross-exam.	4.50	Reasonable	4.50
10/22/84	Prepare and review file for exam. Cf w/AER re same hearing prep.	2.00	Excessive in view of previous 4 hrs.	0
10/24/84	Hearing including travel less .50 trip to Superior Court on another matter (10:00 - 4:30) including travel time (1 hour).	5.00	Reasonable	5.00
10/24 - 11/5/84	9 TCs w/AER & CDM re hearing prep & strategy.	2.50	Excessive in view of other prep.	1.50
11/8/84	Hearing. Working lunch including travel time (1 hour).	8.00	Reasonable	8.00
11/15/84	Hearing. Working lunch including travel time (1 hour).	6.75	Reasonable	6.75
11/26/84	Hearing. Working lunch including travel time (1 hour).	8.00	Reasonable	8.00

11/28/84	Cfs w/AER & CDM re preparation for deposition.	1.00	Reasonable	1.00
11/29/84	Cf w/AER re prep for deposition TC w/CDM re same.	2.00	Reasonable	2.00
12/5/84	Hearing. Working lunch including travel time (1 hour).	7.75	Reasonable	7.75
12/6/84	Cf w/Moore - Research. Although subject researched, not provided.	1.75	Reasonable.	1.75
12/8/84	Cf re Status of Case; Moore, Jason, and Wysong.	1.75	Reasonable	1.75
12/10/84	Cf w/AER & Moore re experts.	1.50	Reasonable	1.50
12/10/84	Jason & Wysong & hearing.	.25	Reasonable	.25
12/10/84	Cf/Wysong & AER & expert witness. Cf w/Moore again.	1.50	Reasonable	1.50
12/11/84	Hearing. Working lunch including travel time (1 hour).	8.75	Reasonable	8.75
12/12/84	Hearing. Working lunch including travel time (1 hour).	8.00	Reasonable	8.00

12/13 - 12/14/84	Cfs w/CDM & Wysong re hearing prep	1.75	Reasonable	1.75
12/13 - 12/14/84	5 TCs w/AER re hearing prep.	2.50	Reasonable	2.50
12/21/84	Meet w/Wysong & CDM including travel time (1 hour).	3.00	Reasonable	3.00
1/2/85	Prepare AER for direct exam.	8.00	Excessive in view of prep. on 12/13/84	3.00
1/3/85	Hearing before PAB. Working lunch including travel time (1 hour).	8.00	Reasonable	8.00
1/4/85	Hearing before PAB. Working lunch including travel time (1 hour).	8.00	Reasonable	8.00
1/8/85	Cfs w/AER, CDM, & Dempster re prep for cross-exam of Moortgat.	2.50	Reasonable	2.50
1/17/85	Review Fogel opinion and follow- up TC to AER re tactics.	.50	Reasonable	.50
1/24/85	Hearing prep.	2.00	Reasonable	2.00
1/24/85	Prep Moortgat to give testimony.	5.30	Excessive in view of two prior hours devoted to prep.	0

1/25/85	Hearing. Working lunch including travel time (1 hour).	8.00	Reasonable	8.00
1/29/85	Cfs w/AER & CDM re settlement negotiations. Various offers being made.	1.00	Reasonable	1.00
2/4/85	Hearing prep. TCs w/AER re Moortgat's testimony and Robinson's memo.	3.00	Excessive	1.50
3/11/85	Cf w/AER & CDM re hearing prep.	1.50	Reasonable	1.50
3/11/85	Cf w/RTS. Additional Hearing prep.	2.50	Denied, excessive.	0
3/12/85	Hearing abbreviated because WTC ill.	3.00	Reasonable	3.00
3/13/85	Cfs w/AER & CDM re hearing prep & strategy.	1.00	Reasonable	1.00
3/22/85	TCs w/CDM re redirect of AER & additional prep for redirect.	2.50	Reasonable	2.50
3/25/85	Hearing prep.	9.00	Excessive considering other prep time used.	2.50

3/26/85	Hearing prep. Hearing. Working lunch including 1 hour travel time.	10.00	Excessive considering other prep. time used.	2.50
3/27/85	Hearing prep. Hearing. Working lunch including 1 hour travel time.	10.00	Excessive considering other prep. time used.	2.50
3/28/85	Cf w/AER & CDM re hearing prep.	3.50	Excessive	2.00
3/28/85	Drafting letter to Brooks & Roth.	NC		
4/4/85	Cf w/CDM re Kirsh & Booth testimony.	1.00	Reasonable	1.00
4/8/85	To GAO. Meet/CDM. Get & read brief in opposition to GAO's motion to remove stay on AER's termination including travel time (1 Hour).	3.50	Did not prevail. Stay was removed.	0
4/12/85	Hearing prep. Prep for Wysong testimony (1:00-5:00).	4.00	Excessive	2.00
4/7-8 & 12/85	Draft, edit, & rewrite letters to Brooks and Roth.	6.00	Unclear how time devoted to or related to this call.	



4/15/85	Cf & working lunch w/CDM re hearing prep.	2.00	Reasonable	2.00
4/15/85	Hearing prep. Scripting Wysong testimony.	1.50	Excessive	1.50
4/16/85	Hearing. Working lunch including travel time (1 hour)	8.00	Reasonable	8.00
4/17/85	Cf w/CDM and Wysong re Wysong hearing testimony.	1.00	Reasonable	1.00
4/23/85	TCs from PAB re schedule for hearing.	.25	Reasonable	.25
5/17/85	Preparing Wysong to testify at hearing (12:45-4:00).	3.75	Denied. Excessive and did not question Wysong.	0
5/20/85	Hearing. Examine Wysong & Robinson. Working lunch including travel time (1 hour).	7.50	Reasonable	7.50
5/23/85	Examine Kirsh & Rosen. Working lunch including travel time (1 hour). Hearing ends.	6.00	Reasonable	6.00
6/24/85	Review draft finding of facts drafted by CDM.	4.00	Excessive. This was a review not a rewrite or edit.	1.50

6/25/85	Cf w/CDM. Edit findings of facts	1.75	Reasonable	1.75
10/24/85	CF w/CDM re hearing examiner's opinion.	1.50	Reasonable	1.50
10/25/85	Analyze hearing examiner's decision. Consider options. Revise strategy. Cfs w/AER & CDM re opinion.	4.50	Reasonable	4.50
11/1 - 11/2/85	To CDM's office to acquire draft exceptions to the hearing examiner's proposed determination. Reviewing & revising same including travel time (1 hour).	5.00	Excessive. Should not take five hours to acquire draft of any document.	1.50
11/3/85	Review & revise CDM's draft of exceptions.	3.50	Reasonable	3.50
11/4/85	Review & revise CDM's draft exceptions.	1.00	Reasonable	1.00

11/4/85	Meeting w/CDM to review and discuss draft exceptions to hearing examiner's proposed determination.	3.50	Excessive	1.00
11/13/85	Read & review brief as filed. TC w/CDM.	1.75	Reasonable	1.75
12/2/85	Cf w/CDM re review of Respondent's brief.	1.50	Excessive in view of prior review.	1.50
12/3/85	Cf w/CDM to consider filing Motion for Summary Judgment based on undisputed facts, Respondent's brief of exceptions to hearing examiner's proposed determination, and case file.	3.50	Reasonable	3.50
12/5/85	To CDM's office. Review, revise and edit motion including travel time (1 hour).	3.50	Reasonable	3.50
7/10/86	TC w/AER how to proceed in light of opinion.	1.00	Reasonable	1.00

7/10/86	Cfs w/AER & CDM re PAB opinion. Review file. Discussions and consideration of next move.	3.00	Reasonable	3.00
7/11/86	Reviewing records in prep of drafting fee petition. Drafting fee petition.	3.50	Reasonable	3.50
7/15/86	Cf w/AER re prep of fee petition. Review opinion and file in prep to draft fee memo. Review.	2.00	Reasonable	2.00
7/21/86	Reviewing and analyzing record. Drafting petition for fees.	4.00	Excessive	2.00
7/22/86	Reviewing and analyzing record. Drafting petition for fees.	2.50	Reasonable	2.50

7/23/86	Draft affidavits for WTC & AER supporting petition for fees. Draft letter to AER re affidavits. TCs w/AER re verifying WTC's time against his calendar.	4.50	Excessive. Unclear what was done on prior occasions. Drafting memo WTC and AER.	2.00
7/23/86	Prepare bills. Review time records in preparation for drafting fee petition.	2.50	Denied. Inconsistent and excessive. Claims to have been drafted on prior dates.	0
7/25/86	Drafting petition for fees.	7.50	Excessive in view of prior drafts.	2.50
8/13/86	Trip to Carl's office to review our Opposition to Stay Motion.	1.50	Reasonable	1.50
8/27/86	Edit & revise Stay Motion & mail.	4.00	Denied	0
8/27/86	Cf w/Schwimmer re \$3,000 (3 calls) inst. to AER to get here & Cf Bowers (4 calls).	1.25	Reasonable	1.25

8/28/86	Drafting supplemental motion for attorney's fees.	3.00	Reasonable	3.00
8/29/86	Cfs w/AER & Mosher re GAO providing AER with \$3,000 to return from Indiana. To GAO to pick up check. Take check to bank, but they will not cash it. Return check to GAO includes travel time (1 hour).	2.50	Reasonable	2.50
9/12/86	Drafting petition to enforce the order of the PAB Cf w/AER & CDM re continued retaliation in the form of job assignments requiring extensive travel. Consider involvement of Mosher in same including travel time (1 hour).	3.50	Did not prevail.	0

9/16/86	Cf w/AER & CDM re failure to make client whole; ongoing retaliation including travel time (1 hour).	1.00	Reasonable	1.00
9/16/86	Settlement negotiations w/Mosher including travel time (1/2 hour).	1.00	Reasonable	1.00
9/25/86	Cfs w/AER & CDM re AER has not yet received back pay and has been assigned to duty at Washington Regional Office rather than the Accounting and Financial Management Division (AFMD) as ordered by PAB.	2.50	Did not prevail.	0
9/29/86	Cf w/AER & CDM in preparation to draft petition to enforce ruling of the Board. Drafting petition top force ruling of PAB.	2.00	Denied. Did not prevail.	0

9/30/86	Cf w/AER re petition to enforce additional settlement offers and general case status.	.50	Denied. Did not prevail.	0
10/1/86	To PAB. Meet w/Mr. James and Schwimer re scheduling of evidentiary hearing on fees including travel time (1 hour).	1.50	Reasonable	1.50
10/8/86	Fee petition discovery. Draft, edit, finalize, and serve (mail) interrogatories and Requests to produce.	2.75	Reasonable	2.75
10/12/86	TC w/AER re order requiring GAO to show cause for failing to put AER back in original job at AFMD.	.50	Reasonable	.50
10/14/86	Review and consider Schwimmer's late compliance letter explaining failure to make back pay or return AER to former position.	1.00	Reasonable	1.00



10/16/86	Cf w/AER re settlement offers and work situation at GAO. Drafting answers to Respondent's fee petition discovery.	2.33	Reasonable	2.33
10/17/86	Cf w/CDM re preparation for evidentiary hearing on fees.	.50	Reasonable	.50
10/20/86	Preparing detailed columnar bill in response to Respondent's fee petition discovery request.	3.50	Reasonable	3.50
10/20/86	Cf w/AER. Reading and considering Schwimmer's motion for an expansion.	.25	Reasonable	.25
<u>B. Edward W. Tuppling</u>				
8/17/81	Cf w/WTC re closing argument and damage section.	2.00	Denied. Petitioner failed to establish what part of case to which these hours are related.	0

7/1/81	Cf w/WTC re policy, law, strategy, and legal research.	2.00	0
7/7/81	Cf w/WTC re same.	2.50	0
7/17/81	Legal Research.	2.00	0
7/30/81	Cf w/WTC re policy, law, strategy, & legal research.	4.00	0
7/31/81	Legal Research.	3.50	0
<u>C. Richard T. Sampson</u>			
Entire Case	Cfs w/WTC re policy, law, strategic planning, and legal research.	8.00	0

### **Reasonable Hourly Rate**

The second half of the formula to determine whether Petitioner's request for fees is reasonable demands that I make a determination as to the reasonableness of Petitioner's hourly rate. Petitioner requests that for services rendered prior to the period of July 13, 1983, the hourly rate should be \$100 per hour and for the period subsequent to July 13, 1983, the hourly rate should be \$150 per hour. Petitioner argues that he and his counsel initially agreed, through a written contingent fee arrangement, that he would be charged an hourly rate of \$50 per hour for all legal services provided. Consistent with the contingent arrangement, if Petitioner prevailed, the rate of compensation would be \$100 per hour. Petitioner further contends that the terms and conditions of the written agreement were renegotiated and modified by an oral agreement of July 13, 1983. Under the terms, and conditions of the renegotiated oral agreement, Petitioner agreed that for all legal services rendered after July 13, 1983, counsel would be compensated at a rate of \$150 per hour and that Petitioner would only owe for the services rendered after July 13, 1983, if Petitioner prevailed.

Respondent, on the other hand, argues that Petitioner failed to establish a prima facie case for an hourly rate of \$150 per hour and that \$50 per hour is a reasonable hourly rate of compensation for Petitioner.

In determining the reasonable hourly rate, I must first determine the rate prevailing in the relevant community. Blum v. Stenson, 465 U.S. 886 (1984). In making that determination I must look at (1) the expenses, reputation, and ability of Petitioner's counsel; (2) the skills necessary to perform the legal services; (3) the customary fees in Petitioner's community; (4) the nature and length of the professional relationship between Petitioner and his counsel; (5) awards received by Petitioner's counsel in similar cases; and (6) the amount involved and the results obtained in this case.

I find that based upon the evidence and facts presented in this case, \$150 per hour is not an unreasonable hourly market rate for an experienced senior civil rights litigator practicing in the Washington, D.C., Metropolitan Area. Respondent acknowledges this point and I found the testimony of Mr. Sampson on this issue very creditable. However, as argued by Respondent, I also find that Petitioner's counsel is not an experienced senior civil rights litigator. Petitioner's counsel testified during the hearing that he was not an expert in Federal Employment law or EEO law. He made a similar statement during oral argument on Respondent's Motion for Partial Dismissal, when he stated that he was not an expert in civil rights cases and he relied on the General Counsel for guidance in this area. Further, Petitioner's counsel has had extremely limited experience in representing and litigating EEO and civil rights employment cases. Counsel's experience is limited to appearances in three or four administrative agency proceedings and one court trial. According to the evidence, Petitioner's counsel's field of expertise is accounting. Therefore, because Petitioner's counsel is working outside his field of expertise, he cannot command an hourly rate equal to that of an attorney specializing in civil rights cases. Johnson v. Georgia Highway Express, Inc., *supra* at 717-19.

Even more important, is the fact that throughout the proceeding before the Board, Petitioner's counsel acted more as an associate to the General Counsel and not as a experienced senior civil rights litigator. Petitioner's counsel was not lead counsel. The General Counsel was lead counsel and, as argued by Respondent, the yeoman's portion of the trial work before the Board was performed and orchestrated by the General Counsel. Petitioner's counsel was merely an associate to the General Counsel. I recognized that Petitioner's counsel's role was defined and limited according to our regulations, but in making my determination as to the reasonableness of his hourly rate, I cannot overlook his role in the case and thereby award an unreasonable fee in violation of §706(k). In Re Fine Paper Antitrust Litigation, *supra* at 591-93; Ursic v. Bethlehem Mines, 719 F.2d 670, 677 (3rd Cir. 1983); Northcross v. Board of Education, 611 F.2d 624, 638 (6th Cir.), *cert. denied*, 447 U.S. 911 (1979).

Lastly, Petitioner's counsel's role in the case before the Board was not more than that of an associate and Petitioner has provided de minimis support for a finding by me that his counsel's hourly market rate is \$150 per hour. Petitioner's counsel's prior billing practice for civil rights cases certainly does not support his claim for an hourly rate of \$150 per hour. If anything, Petitioner's counsel's prior billing practice supports a claim of \$55, \$75, or \$100 per hour.

Of the three rates, I find \$75 per hour is a reasonable hourly rate for Petitioner's counsel's services in this case. Although I found unconvincing the testimony of Petitioner and his counsel about their verbal agreement to increase the hourly rate from \$55 to \$100 per hour, I also find that the hourly rate of \$55 per hour is a significantly low rate for an associate civil rights litigator in the Washington Metropolitan Area. Also, this Board found in 1981 that Petitioner's counsel's reasonable hourly rate was \$55 per hour and my finding of \$75 per hour provides for any inflation increases. Having adjusted the hourly rate to \$75 per hour, I see no need to make any other upward adjustments. Because Petitioner's counsel's role in this case is that of a mere associate to the General Counsel and because he did not assume complete risk, as is

evident by counsel's written contingent fee agreement with Petitioner, I see no need to make an upward adjustment above \$75 per hour. The weight of the case was not on Petitioner's counsel's shoulders.

### **Reasonable Costs**

Petitioner's initial claim for costs was \$1,374.56. Petitioner has since reduced that figure to \$967.71, of which the lion's share, \$707.24, is photocopying generated by this proceeding. I find Petitioner's cost to be within the bounds of reasonableness, considering the magnitude of this case.

### **Fees and Costs of Fitzpatrick & Associates**

It is well known that a Petitioner can be compensated for the time spent preparing and processing a claim for an award of attorney's fees. Lund v. Affleck, 587 F.2d 75, 77 (1st Cir. 1978), Copeland v. Marshall, 641 F.2d 880, 901 (D.C. Cir. 1980 ) (en banc). Therefore, I find the reasonable hourly rate for the firm of Fitzpatrick & Associates is \$130 per hour for Robert B. Fitzpatrick; \$65 per hour for Mark D. Laponsky; and \$50 per hour for Benjamin T. Boscolo. M. Fitzpatrick is a well known experienced civil rights litigator in the Washington, D.C., Metropolitan area who compels an hourly rate of \$130 per hour and the hourly rates \$65 and \$50 per hour, respectively, for Mr. Laponsky and Boscolo are well within the range of reasonable hourly rates for associates and law clerks within the Washington, D.C., Metropolitan area. The firm's claim for an increase in the hourly rate, as of January 1, 1987, for Mr. Laponsky to \$80 per hour, and Mr. Boscolo to \$65 per hour after less than 60 days work, I find unreasonable under the circumstances of this case. There are no unusual circumstances which warrant such an increase. Had Fitzpatrick & Associates performed its work over a substantially longer period of time, such an increase may be warranted.

Finally, the time claimed for Fitzpatrick & Associates for Mr. Laponsky of 1.10 hours on January 21, 1987, and .30 hour on January 22, 1987; and for Mr. Fitzpatrick of .55 hour on December 29, 1986, .65 hour on December 30, 1986, and .10 hour on December 30, 1986 is denied because the work was performed on matters upon which Petitioner did not prevail before this Board. Hence, of the hours claimed by Fitzpatrick & Associates, I find the reasonable hours for Mr. Fitzpatrick to be 60.95, Mr. Laponsky 146.10, and Mr. Boscolo 47.30.

Fitzpatrick & Associates request \$1,827.53 in costs. Examination of the claims reveals that \$720.00 are costs associated with the fee of Mr. Sampson who provided very creditable testimony for Petitioner as an expert witness in the hearing before me. Other costs include photo-copying, postage and messenger service. These costs appear reasonable.

### **Conclusion**

I, therefore, find that Petitioner should be awarded \$31,247.75 in Attorney's fees; \$967.71 in costs; and Fitzpatrick and Associates should be awarded \$19,785.00 in fees and \$1,827.53 in costs.

### **Notes**

1. It is questionable whether the General Counsel has authority to seek, on behalf of a Petitioner, attorney's fees. However, I need not address that issue because it is not before me.

2. Prior to completion of the evidentiary hearing on the General Counsel's Petition for Corrective Action, the term of the Presiding Member hearing the case expired and the incoming Chairman appointed the outgoing Presiding Member as Hearing Officer.

3. Pending at the time of the hearing on the Motion for Partial Dismissal were also two motions to Compel Discovery; one by Petitioner and one by Respondent, respectively.